IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7915 of 2004

For Approval and Signature:

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AHMEDABAD ELECTRICITY CO LTD - Petitioner(s)
Versus
AHMEDABAD CITY CIVIL COURT AT AHMEDABAD & 1 - Respondent(s)

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Appearance :
MR KB PUJARA for Petitioner
MR JB PARDIWALA for Respondent(s) : 1,
MR MR.V.K.SHAH FOR MR BK DAMANI for Respondent(s) : 2,

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CORAM : HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 12/07/2006

ORAL JUDGMENT

1. By this petition under Articles 226 and 227 of the Constitution of India, the petitioner –

Ahmedabad Electricity Co. Ltd. seeks the following substantive reliefs :

> “[10] The petitioner therefore humbly prays that YOUR LORDSHIPS BE PLEASED to issue writ of or in the nature of certiorari or any other appropriate writ, order or direction:-
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> [A] To quash and set aside the illegal action of the Ahmedabad City Civil Court in entertaining Civil Suit No.1776/2004 and in passing mandatory temporary injunction in favour of the plaintiff on Notice of Motion Exh.13 and 14 dated 2/7/2004, as per Annexure “C” colly. as being wholly without jurisdiction;
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> [B] To hold and declare that the Ahmedabad City Civil Court has no jurisdiction to entertain the Civil Suit No.1776/2004 and to grant any injunction therein in view of section 145 of the Electricity Act, 2003;
>
> [C] To hold and declare that Civil Courts do not have jurisdiction to entertain any civil

suit and to grant any injunction in the matters arising from “unauthorized use of electricity” as provided in Section 145 of the Electricity Act, 2003.”

2. The respondent No.2 is using electricity vide Service No.166022 in the name of “Meghdoot Petrol Pump”. The said service was visited and inspected on behalf of the petitioner on 17th June, 2004 in the presence of the consumer, and allegedly serious malpractices and illegalities were discovered. In the circumstances, the supply was immediately disconnected and a provisional assessment for unauthorized use of electricity was carried out under Section 126 of the Electricity Act, 2003 for a sum of Rs.96,812/- and forwarded to the respondent No.2 on 18th June, 2004.

3. The respondent No.2 instituted a suit before the City Civil Court, at Ahmedabad being Civil Suit No.1776/2004 and prayed for mandatory injunction for re-connection of supply as well as moved Notice of Motion praying for the same relief by way of mandatory injunction for re-connection of supply. The Trial Court entertained the Civil Suit and passed an exparte mandatory order dated 2nd July, 2004 directing the petitioner to re-connect the electric supply of the respondent No.2's Petrol Pump within 48 hours.

4. Being aggrieved by the aforesaid order passed by the Trial Court, the petitioner has approached this Court by way of the present petition, mainly contending that the jurisdiction of the Civil Court is specifically barred in view of the provisions of Section 145 of the Electricity Act, 2003 in respect of any matter covered by Section 126 or 127 of the Act, and that, no injunction can be granted by any Court or other authority in respect of any action taken or to be taken under the Act.

5. Heard Mr.K.B.Pujara, learned advocate on behalf of petitioner and Mr.V.K.Shah, learned advocate for Mr.B.K.Damani on behalf of respondent No.2.

6. It is common ground between the parties that the issue involved in the present petition stands concluded by a decision of a Division Bench of this Court in the case of *Torrent Power AEC Ltd. v. Gayatri Intermediates Pvt. Ltd.*, 2006 (2) GLH 375 wherein this Court has held that, in respect of cases where theft was detected prior to 10th December, 2004, the matters will be governed by the Conditions of Supply and Miscellaneous Charges for Supply of Electrical Energy framed by the Gujarat Electricity Board, or by the Ahmedabad Electricity Company, as the case may be. That, since during this period, the consumers were governed by the Conditions of

Supply and Miscellaneous Charges and not by the provisions of the new Act, the question of ouster of jurisdiction of Civil Court would not arise in cases where theft was detected before 10th December, 2004. But while deciding the application for interim injunction, Civil Court shall have to consider the principles laid down by this Court in *Kiran Industries v. G.E.B.*, 1995(2) GLR 1158.

7. Applying the aforesaid principles to the facts of the present case, admittedly, the theft was detected prior to 10th December, 2004, hence, the Civil Court does have the jurisdiction to decide the case. However, while while deciding the application for interim injunction, the Civil Court shall have to consider the principles laid down by this Court in *Kiran Industries v. G.E.B. (supra)*.

8. For the aforesaid reasons, the petition fails and is accordingly rejected. The ad-interim relief stands vacated. Rule is discharged with no order as to costs.

[HARSHA DEVANI, J.]

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